

BILL LOCKYER, Attorney General
of the State of California
JOSE R. GUERRERO, State Bar No. 97276
Supervising Deputy Attorney General
LAWRENCE MERCER, State Bar No. 111898
Deputy Attorney General
CATHERINE E. SANTILLAN
Senior Legal Analyst
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5539
Facsimile: (415) 703-5480

Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2030

LUIS AROLDI ZUNIGA
6244 Wittenham Way
Orangevale, CA 95662

A C C U S A T I O N

Respiratory Care Practitioner No. 14214

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about April 18, 1991, the Respiratory Care Board issued Respiratory Care Practitioner License Number 14214 to Luis Aroldi Zuniga (Respondent). The license is current and valid, and will expire on May 31, 2008 unless renewed.

DISCIPLINARY HISTORY

3. On or about June 6, 2006, respondent signed a Stipulation and Order re Interim Order of Suspension in which he agreed to a voluntary suspension of his license pending

1 the issuance of a final Decision and Order by the Respiratory Care Board in this matter.

2 JURISDICTION

3 4. This Accusation is brought before the Respiratory Care Board (Board),
4 Department of Consumer Affairs, under the authority of the following laws. All section references are
5 to the Business and Professions Code unless otherwise indicated.

6 5. Section 3710 of the Code states: "The Respiratory Care Board of
7 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,
8 the Respiratory Care Practice Act]."

9 6. Section 3718 of the Code states: "The board shall issue, deny, suspend, and
10 revoke licenses to practice respiratory care as provided in this chapter."

11 7. Section 3750 of the Code states:

12 "The board may order the denial, suspension or revocation of, or the imposition of
13 probationary conditions upon, a license issued under this chapter, for any of the following
14 causes:

15 "(g) Conviction of a violation of any of the provisions of this chapter or of any
16 provision of Division 2 (commencing with Section 500), or violating, or attempting to
17 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
18 violate any provision or term of this chapter or of any provision of Division 2 (commencing
19 with Section 500).

20 "(j) The commission of any fraudulent, dishonest, or corrupt act which is
21 substantially related to the qualifications, functions, or duties of a respiratory care
22 practitioner.

23 8. Section 3752.6 of the Code states:

24 "For purposes of Division 1.5 (commencing with Section 475), and this chapter
25 [the Respiratory Care Practice Act], a crime involving sexual misconduct or attempted
26 sexual misconduct, whether or not with a patient, shall be considered a crime substantially
27 related to the qualifications, functions, or duties of a respiratory care practitioner."
28

9. Section 3752.7 of the Code states:

“Notwithstanding Section 3750, any proposed decision or decision issued under this chapter [Chapter 8.3, the Respiratory Care Practice Act] in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge. For purposes of this section, the patient shall no longer be considered a patient of the respiratory care practitioner when the order for respiratory procedures is terminated, discontinued, or not renewed by the prescribing physician and surgeon.”

10. Section 3755 of the Code states:

“The board may take action against any respiratory care practitioner who is charged with unprofessional conduct in administering, or attempting to administer, direct or indirect respiratory care. Unprofessional conduct includes, but is not limited to, repeated acts of clearly administering directly or indirectly inappropriate or unsafe respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or monitoring techniques, and violation of any provision of Section 3750. The board may determine unprofessional conduct involving any and all aspects of respiratory care performed by anyone licensed as a respiratory care practitioner.”

COST RECOVERY

11. Section 3753.5, subdivision (a) of the Code states:

"In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case."

///

1 12. Section 3753.7 of the Code states:

2 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall include
3 attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing,
4 and service fees."

5 13. Section 3753.1 of the Code states:

6 "(a) An administrative disciplinary decision imposing terms of probation may include,
7 among other things, a requirement that the licensee-probationer pay the monetary costs associated with
8 monitoring the probation. "

9 FIRST CAUSE FOR DISCIPLINE

10 (Corrupt Act; Sexual Misconduct; Unprofessional conduct)

11 14. Respondent is subject to disciplinary action under sections 3750(j) [corrupt
12 act], 3752.6 [sexual misconduct], 3755 [unprofessional conduct] in that he used a computer and
13 the Internet in an attempt to persuade, induce, entice or coerce an individual he believed to be a
14 minor to engage in sexual acts. The circumstances are as follows:

15 15. In 2006, Special Agent Ulises G. Solorio with the United States
16 Department of Homeland Security, United States Immigration and Customs Enforcement (ICE)
17 worked in the investigation unit involving enforcement of federal criminal statutes involving sexual
18 exploitation of children. On or about May 24, 2006, Agent Solorio provided a sworn affidavit in
19 support of a criminal complaint against respondent. Along with Stanislaus County Sheriffs, he
20 investigated respondent in a case involving respondent's use of a computer and the internet. 18
21 United States Code section 2422(b) makes it a crime to use the mail or any facility or means of
22 interstate or foreign commerce to knowingly persuade, induce, entice or coerce any individual
23 under the age of 18 years to engage in prostitution or any sexual activity for which any person can
24 be charged with a criminal offense, or attempts to do so.

25 16. Detective Ken Hedrick of the Stanislaus County Sheriff's Department acted
26 in an undercover capacity utilizing an America On Line (AOL) screen name of CNTREEGURL,
27 a 13 year old girl named "Tara," to investigate a subject suspected of attempting to coerce or entice
28 a minor, via the Internet, to engage in illegal sexual activity. An individual using the AOL screen

1 name of "Eluxoxo14" engaged in sexually explicit chat sessions via AOL Instant Messenger with
2 CNTREEGURL from April 10, 2006 through May 21, 2006.

3 "Eluxoxo14" exchanged photographs with Tara, and was identified as respondent via his
4 California driver's license. Detective Hedrick recorded approximately ten chat sessions between
5 April 10, 2006 and May 21, 2006 between "Eluxoxo14" and "CNTREEGURL". The chat
6 sessions were sexually explicit, and on May 20, 2006 respondent agreed to pay "Tara" \$400.00 for
7 sex, and arranged to meet "Tara" on May 22, 2006 at a motel room in Salida, California.

8 17. On or about May 22, 2006, at approximately 9:30 a.m., Agent Solorio and
9 Stanislaus County Sheriff's Detectives conducted a surveillance of the Salida motel meeting place.
10 They observed a Hispanic male, later identified as respondent, enter the motel lobby. Respondent
11 then attempted to leave the premises. At this time, Agent Solorio and the Stanislaus County
12 Sheriff's Detectives took respondent into custody.

13 18. Respondent was placed under arrest for violating 18 United States Code
14 section 2422(b) which makes it a crime to use the mail or any facility or means of interstate or
15 foreign commerce to knowingly persuade, induce, entice or coerce any individual under the age of
16 18 years to engage in prostitution or any sexual activity for which any person can be charged with
17 a criminal offense, or attempts to do so. Respondent was in possession of \$400.00 in cash. He
18 consented to a search of his vehicle, which contained a laptop computer and a cellular telephone.

19 19. Respondent was taken to the Stanislaus County Sheriff's Department
20 substation. He was advised of his Miranda rights. He waived his rights, verbally and in writing.
21 He stated that he was employed at Methodist Hospital in Sacramento and had worked there for the
22 last three years. He stated that he had previously worked for a children's hospital in the Los
23 Angeles area. Respondent admitted that he uses the screen name "Eluvxoxo14," and he admitted
24 that he had been having inappropriate email conversations with a thirteen year old girl for several
25 weeks.

26 20. Respondent further stated that he had been receiving child pornographic
27 images through AOL. He stated that when requested, he would exchange those images with other
28 AOL users. He stated that he had at least fifty child pornography images.

21. On May 24, 2006, a criminal complaint titled United States of America vs. Luis Aroldo Zuniga, case no. 1:06MJ00132 was filed in the United States District Court, Eastern District of California.

22. On June 1, 2006, a criminal indictment case no. 1:06CR00199 was filed. Count One charged respondent with a violation of 18 U.S.C. section 2422(b), use of a facility of interstate commerce to induce a minor to engage in criminal sexual activity.

23. Therefore, respondent's license is subject to discipline because he has engaged in acts constituting a violation of Business and Professions code sections 3750(j) [corrupt act], 3752.6 [sexual misconduct], 3755 [unprofessional conduct].

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking or suspending Respiratory Care Practitioner Number 14214, issued to Luis Aroldo Zuniga.

2. Ordering Luis Aroldo Zuniga to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring.

3. Taking such other and further action as deemed necessary and proper.

DATED: June 22, 2006

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant